

CITY OF HAYWARD AGENDA REPORT

Planning Commission Meeting Date <u>10/14/99</u> Agenda Item___5_

TO:

PLANNING COMMISSION

FROM:

Nancy M. Hutar, Project Planner

SUBJECT:

REVOCATION OF USE PERMIT APPLICATION NO. 90-44 - K9-K9 KENNELS (APPLICANT), JAMES AND FRANCES DALTON TRUST (OWNERS) - Request for the Planning Commission to consider the revocation

of a use permit for the operation of a dog kennel/training facility.

The project location is 4125 Breakwater Avenue, between Whitesell Street and Johnson Road in an Industrial (I) District.

RECOMMENDATION:

It is recommended that the Planning Commission adopt the attached resolution and revoke Use Permit 90-44, based on the findings set forth in Attachment C.

DISCUSSION:

Setting

The 3.85-acre property is irregular in shape, with approximately 0.70 acres occupied by the kennel. The site is located at the westerly end of Breakwater Avenue, just to the north of Johnson Road (Attachment A for location map). The kennel area contains a 7,200 square-foot building for an office, kitchen, storeroom and ten indoor dog runs. There are four outdoor training/exercise yards, the largest being 110 feet by 129 feet and the smallest being 25 feet by 35 feet (Attachment B for site plan). Also located on the 3.85-acre site with the kennel facility is a large building that used to house different businesses and two outdoor storage yards. The surrounding parcels are also zoned Industrial (I) with a variety of uses, which are compatible with the kennel use. Adjacent to the kennel site is a non-conforming single-family residence about 310 feet away from the kennel.

Background

In January 1991, the Hayward Board of Adjustments legitimized the existing illegal use of the dog kennel and training facility through Use Permit 90-44. During that hearing, the Board of Adjustments was told that breeding and training would be the major operations of the business (breeding, training and selling Rottweilers) with boarding of dogs as an incidental use. At that time, the business was operating with 12 dogs living at the site. The Alameda County Health Department (Vector Control) was also concerned with the cleanliness of the operation. The Department was then working with the applicant to meet its standards for the drainage of the

indoor runs. The conditions of approval (Attachment C) included corrected drainage and the compliance with all Animal Control requirements, such as total number of dogs allowed on the site, size of the kennels, treatment of animals, vaccine information and licenses for all animals kept at the site.

VIOLATIONS:

The Planning Director is referring this use permit for revocation to the Planning Commission, because since the Board of Adjustments' conditional approval in 1991, there have been many violations of the use permit, zoning code and Animal Control regulations. Specific violations, as outlined below, continue to be problematic:

May 17, 1993

Report by Animal Control – A citizen walking by the kennel was attacked by a dog that was loose from the business.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance, Section 4-4.13, Animals At-large on Public Property, Section 4-4.15, Knowledge of Bite – Duty to Report, and 4-4.50, Vicious Animals a Public Nuisance.

October 26, 1993

Report by Animal Control – A privately owned dog was boarded at the kennel. The kennel was provided with medicine by the owner and advised to call if the dog got sick. The dog was there for six days and when it was picked up and examined by a veterinarian it was 7 pounds under weight, it had wounds on its eyes which were untreated and it had diarrhea.

Violation of Hayward Municipal Code Section 4-4.15, Knowledge of [animal] Bite – Duty to Report.

May 19, 1994

Report by Animal Control – A privately owned dog was boarded at the kennel. The dog was allowed to breed with other dogs without the owner's permission. When the dog was picked up, it was lethargic and thin.

January 12, 1995

Report by Animal Control – A privately owned dog was boarded at the kennel. The dog came down with parvo-virus after being boarded at the kennel. The kennel operator was also caring for several puppies that had parvo-virus. These puppies were left in contact with the general kennel population.

December 31, 1995

Report by Animal Control – A privately owned dog that was being boarded at the kennel escaped the facility and was found dead at Hesperian Boulevard and Cathy Way. The dog's owner was not immediately notified.

Violation of Hayward Municipal Code Section 4-4.13, Animals At-large on Public Property.

December 31, 1995

Report by Animal Control – While doing business at the kennel, a customer's son was bitten by a Rottweiler that belonged to the kennel operator. Dog was separated from the office by a gate and the child leaned against the gate.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance, Section 4-4.15, Knowledge of Bite – Duty to Report, and 4-4.50, Vicious Animals a Public Nuisance.

April 2, 1996

Report by Animal Control - A kennel employee sustained a bite from a rescued dog.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance, Section 4-4.15, Knowledge of Bite – Duty to Report and 4-4.50, Vicious Animals a Public Nuisance.

August 28, 1996

Report by Animal Control – A privately owned dog was boarded at the kennel. When the owner retrieved the dog it had a broken leg. The dog was at the kennel for three days. The kennel employees were unaware of the dog's broken leg. The kennel operator said that the dog tried to jump the fence, but it did not look injured.

March 5, 1997

Report by Animal Control – A complainant observed the kennel operator repeatedly hit a dog with his fist and kick the dog with his knee, during a training session. The complainant had applied for an advertised employee position for an experienced obedience trainer.

August 20, 1997

Report by Animal Control – A privately owned dog was boarded at the kennel for an extended period beginning April 1997. On July 31, 1997 the dog died. The kennel operator told the dog's owner that the dog broke through a door and attacked another dog. The kennel operator said that the dog had a few punctures, but he did not take it to a veterinarian. The kennel operator found the dog dead three hours later. The dog's body was disposed of before the complaint was received by Animal Control.

September 17, 1997

Report by Animal Control - Two dogs, that were provided by the kennel to an adjoining business for security, escaped the facility. The dogs were impounded by Animal Control and retrieved by the kennel operator. The dogs did not have licenses.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance, Section 4-4.13, Animals At-large on Public Property, and Section 4-4.20, License Required.

September 24, 1997

The Hayward Community Preservation Office and the Animal Control Division conducted an inspection of the kennel property. It was found that two mobile homes had been placed at the site illegally, which were being used as residences. These mobile homes were not a part of the use permit approved in 1991. The inspection also revealed that some dog cages were in need

of having the cyclone fencing better attached to the bottom of the cages. It appeared as if animals could have been able to escape and that makeshift repairs were done. The grounds of the kennel contained some feces, which attracted flies, and a moderate odor was present. The Police Department also made the applicant aware of violations pertaining to the keeping and care of the animals. City letter dated November 10, 1997 with re-inspection set for December 15, 1997.

Violation of Hayward Municipal Code Section 10-1.545 – Permits Issued on the Basis of Approved Plans.

September 30, 1997

Report by Animal Control – Two dogs, that were provided by the kennel to an adjoining business for security, escaped the facility. The dogs charged and attacked several people. One dog was shot and killed by the Police Department. The other dog was impounded and ordered destroyed. The destruction order was upheld in court in August 1998. These were the same two dogs that escaped on September 17, 1997.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance, Section 4-4.13, Animals At-large on Public Property, Section 4-4.20, License Required, and 4-4.50, Vicious Animals a Public Nuisance.

October 21, 1997

Report by Animal Control - A complaint was received from an ex-manager who worked at the kennel from June 1996 to February 1997. He said that the kennel operator would neglect injured animals and mistreat others. He stated that he saw: the kennel operator pick up a dog by the leash and swing it around, the boarding of a large dog confined in a small cage for a week, and the kennel operator refused to take dogs with severe injuries to a veterinarian (but would treat the animal himself). The complainant also observed the mauling of a boarded dog by the kennel operator's dog. The complainant stated that the kennel operator would overbook kennel space during holidays, housing many dogs in groups without the owners' knowledge.

October 25, 1997

Report by Animal Control - A dog owner was behind in payments to the kennel and called to work out a payment plan. The kennel operator would not confirm to the pet owner if the dog was still there.

December 1, 1997

City meeting with the kennel operator to discuss the use of the existing illegal trailers and that they must be removed. The kennel operator stated that he would seek a modification to the use permit to allow living in the trailers at the site. He said that he had been living at the site for the past 6 to 7 years and that he told this to the City when he received his use permit in 1991. City letter dated December 2, 1997 and re-inspection postponed until January 15, 1998.

January 7, 1998

Pre-application meeting between the City and the kennel operator for the proposed amendment to the use permit.

February 13, 1998

Report by Animal Control - A privately owned dog escaped from the kennel. The dog owner was available, but was not notified for several days. The dog owner contracted with a pet finder. The dog was located in San Leandro several weeks later. A civil action ensued.

Violation of Hayward Municipal Code Section 4-4.13, Animals At-large on Public Property.

February 23, 1998

Letter from City to the kennel operator extending the time limit to remove one of the trailers while the kennel operator sought modification of the use permit to allow the other trailer. The deadline to remove the trailer was set at April 10, 1998.

April 8, 1998

Letter from City to the kennel operator stating that both trailers had to be removed from the property. If the kennel operator disagreed with the interpretation of the Code, he could file a text amendment. The kennel operator pursued the text amendment.

April 13, 1998

Citation #B000111 was issued by the City for failure to remove one of the trailers.

Violation of Hayward Municipal Code Section 10-1.545 - Permits Issued on the Basis of Approved Plans, Section 10-1.550.

July 24, 1998

Report by Animal Control – The kennel operator's dog bit a customer's child while they were at the kennel. The child had his fingers around the chain link fence wires. The dog was loose behind the fenced area.

Violation of Hayward Municipal Code Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance and 4-4.50, Vicious Animals a Public Nuisance.

August 17, 1998

Court date for the hearing before the San Leandro-Hayward Municipal Court. The City staff appeared, but the kennel operator did not appear. The kennel operator was found guilty in absentia and a fine was imposed. (Citation issued on April 13, 1998).

Violation of Hayward Municipal Code 10-1.541 and 10-1.550, zoning compliance, violations and penalties.

September 3, 1998

Report by Animal Control – A privately owned dog was boarded at the kennel. The owner provided the kennel with medicine for epilepsy and advised the kennel operator that the dog did not get along with other animals. The owner had boarded his dog with the kennel before. A kennel employee placed the dog in a run with another dog. The door dividing the two dogs was possibly not closed. Both dogs fought, with resulting injuries to the epileptic dog. According to the dog owner, the kennel operator told him that this does not happen very often, only 3 to 4 times per year.

Violation of Hayward Municipal Code Section 4-4.15, Knowledge of Bite - Duty to Report.

September 3, 1998

The Planning Commission denied the proposed text change to allow a mobile home(s) for an employee/attendant's sleeping quarters in conjunction with a commercial kennel in the Industrial district. The kennel operator filed an appeal.

September 4, 1998

Report by Animal Control - A check of the Hayward business licenses revealed that the kennel was not licensed. Their renewal form came back undelivered, no such address. However, as of the date of this public hearing, the kennel has a business license that is current.

Violation of Hayward Municipal Code Section 6-1.00, Permits.

October 20, 1998

The City Council denied the kennel operator's appeal from the Planning Commission decision to deny the text change to allow a mobile home(s) for an employee/attendant's sleeping quarters in conjunction with a commercial kennel in the Industrial district.

November 24, 1998

The City inspected the kennel premises, which revealed that the violations continued. Electrical code violations (illegal connections) were noted and there were still two trailers on the property. The kennel operator was given 30 days to remove the trailers. Citation #B000121 was issued for the violations. The site also contained the illegal addition of a shipping container that also had illegal electrical hook-ups. A follow-up letter was sent to the kennel operator on November 25, 1998 with a re-inspection date set for January 4, 1999.

Violations of the Hayward Municipal Code Section 10-1.401, Uses Permitted, Section 10-1.101, Limitation of Land Use, and Section 10-1.545, Conformance - Administrative Modification, and the National Electrical Code Section 301(a), Illegal Installation of Electrical Service, and Section 204, Unlawful Conversion.

January 4, 1999

The City inspected the kennel premises, which revealed that both trailers remained on the property. The electrical service was disconnected from the trailers. Citation #B000122 issued.

Violations of the Hayward Municipal Code Section 10-1.401, Uses Permitted, Section 10-1.101, Limitation of Land Use, and Section 10-1.545, Conformance - Administrative Modification.

March 10, 1999

Court date for hearing before the San Leandro-Hayward Municipal Court. The City staff appeared, but the kennel operator did not appear. The kennel operator was found guilty in absentia and a fine was imposed. (Citations issued on November 24, 1998 and January 4, 1999). The judge said that any further citations should be referred to the District Attorney's office for a misdemeanor.

Violation of Hayward Municipal Code 10-1.541(a) and 10-1.101, zoning compliance, violations and penalties.

April 1, 1999

Letter from the City to the kennel operator stating that three citations were issued for the trailer violations and that there were hearings held before the San Leandro-Hayward Superior Court that found him in violation. The matter was referred to Development Review Services to start the proceedings for the revocation of the use permit.

August 5, 1999

Report by Animal Control - A privately owned dog was boarded at the kennel. The kennel operator then gave the dog to a rescue organization without the owner's permission. The kennel operator claimed the dog was abandoned.

ENVIRONMENTAL REVIEW:

The proposal is not defined as a "project" under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines and is, therefore, exempt from environmental review.

PUBLIC NOTICE:

On October 4, 1999, a Planning Commission public hearing notice was mailed to every property owner and occupant within 300 feet of the subject site, abutting residents and all interested parties as noted on the latest assessor's records. Notice was also provided to the appropriate public agencies. Certified and first-class mailings of the notice were provided to the kennel operator and the property owner on September 28, 1999.

CONCLUSION:

After receiving many verbal and written notices, including three infraction citations and ordered to appear before the San Leandro-Hayward Municipal Court, the violations of the conditions of approval and various other Municipal Code requirements have continued. Based on the extended history of noncompliance for the site, there is no reason to believe that such violations will cease. Unfortunately, consideration of revocation of the use permits appears to be the City's only recourse to end continual non-compliance.

The kennel has been a detriment to the neighborhood and to the kennel's patrons since its inception in 1990. The operator and the property owner have consistently ignored the City's notices to abate use violation situations and violations also continue for the City's Animal Control Division. The manner in which this use is conducted, managed and operated impairs the character and integrity of the zoning district and surrounding area and the applicant has not fully complied with all conditions of approval indicated in the use permit and modification of the use permit would not be in the public interest and it would be detrimental to the public health, safety and general welfare.

Prepared by:

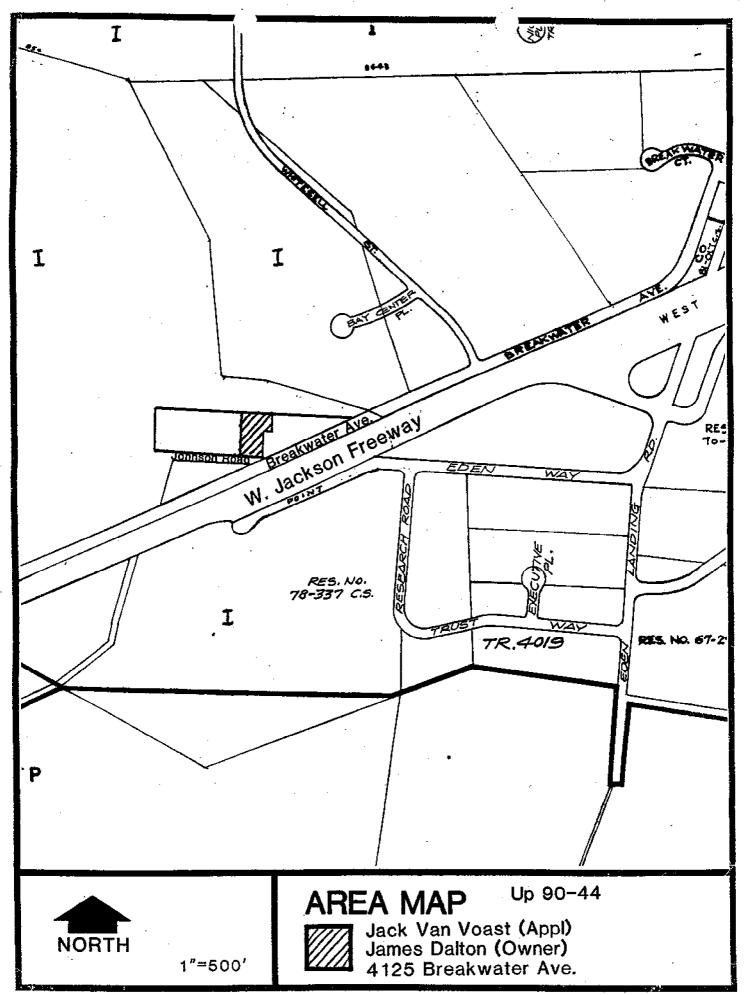
Cathe Woodbrees	
Nancy McHutar, AICP Project Planner	
Project Planner	

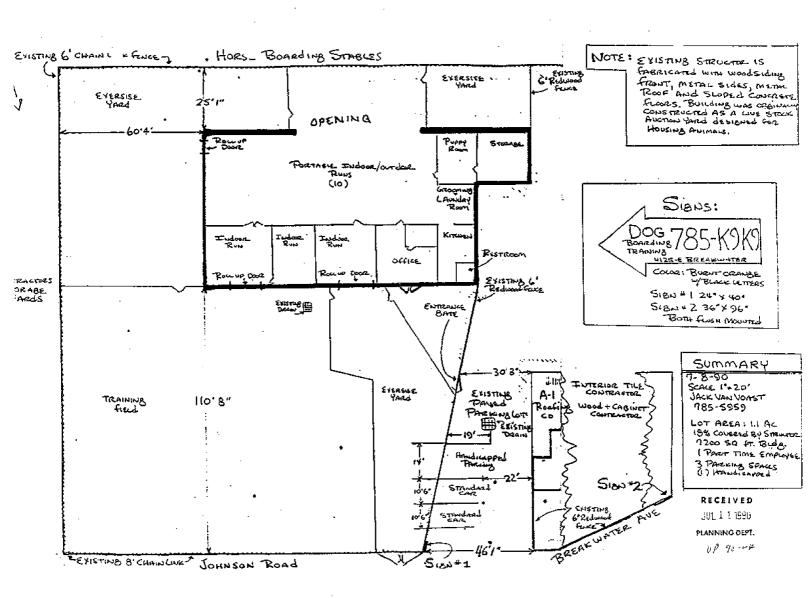
Recommended by:

Cathy Woodbury, ASLA/AICP
Principal Planner/Landscape Architect

Attachments:

Α	Area Map for UP 90-44
В	Site Plan for UP 90-44
C	Findings of Revocation
D	Findings and Conditions of Approval, revised January 31, 1991
E	City letter to kennel operator, dated November 10, 1997
F	City letter to kennel operator, dated December 2, 1997
G	City letter to kennel operator, dated February 23, 1998
H	City letter to kennel operator, dated April 8, 1998
I	San Leandro-Hayward Municipal Court docket and minutes for August 17, 1998
J	City Council staff report for appeal, dated October 20, 1998
K	City notice of electrical violation, dated November 28, 1998
L	City letter to kennel operator, dated November 25, 1998
M	San Leandro-Hayward Municipal Court docket and minutes for March 10, 1999
N	City letter to kennel operator, dated April 1, 1999
O	Photos of site, dated January 4, 1999, November 24, 1998, and April 10, 1998





FINDINGS FOR REVOCATION

Use Permit No. 90-44
4125 Breakwater Avenue
K9-K9 Kennels (Applicant)
James & Francis Dalton (Owners)

Based on the staff report and the public hearing record:

- 1. The use or the manner in which it is conducted, managed or operated impairs the character and integrity of the zoning district and surrounding area in that after receiving many verbal and written notices over a six year period, including three infraction citations and orders to appear before the San Leandro-Hayward Municipal Court, the violations of the conditions of approval and various other Municipal Code requirements have continued. Based on the extended history of noncompliance for the site, there is no reason to believe that such violations will cease. The existing kennel has been a detriment to the neighborhood and to the kennel's patrons since its inception in 1990. The operator and the property owner have consistently ignored the City's notices to abate use violation situations and violations also continue for the City's Animal Control Division.
- 2. The applicant has not fully complied with or completed all conditions of approval or improvements indicated on the approved development plan in that: (a) the facility has experienced repeated offenses of Animal Control regulations, such as maintaining the appropriate size kennels for each dog, the treatment of animals in a humane fashion, and maintaining and complying with vaccine information and licenses for all animals kept at the site, and (b) the facility has installed trailers on the property which were clearly not approved as part of Use Permit 90-44. Modification of the conditions or plan would not be in the public interest or would be detrimental to the public health, safety, or general welfare due to the denial of the City Council to allow a trailer on the site and due to the repeated lack of compliance on the part of the kennel operator.

Violations of Animal Control regulations:

Condition # 9 of Use Permit 90-44

Hayward Municipal Section 4-4.10, Keeping of Certain Animals as Constituting Public Nuisance

Section 4-4.13, Animals At-large on Public Property

Section 4-4.15, Knowledge of Bite - Duty to Report

Section 4-4.50, Vicious Animals a Public Nuisance

Section 4-4.20, License Required

Violations of land use regulations:

Section 10-1.401, Uses Permitted

Section 10-1.101, Limitation of Land Use

Section 10-1.545, Conformance - Administrative Modification,

Section 10-1.545 – Permits Issued on the Basis of Approved Plans,

Sections 10-1.541 and 10-1.550, zoning compliance, violations and penalties

Violations of the Uniform Building Code:

Section 204, Unlawful Conversion

National Electrical Code Section 301(a), Illegal Installation of Electrical Service

FINDINGS

- The proposed use is desirable for the public convenience of welfare in that there is a need for the training/ boarding facility;
- 2. As conditioned, the proposed use will not impair the character and integrity of the zoning district and surrounding area nor will the proposed use be detrimental to the public health, safety, or general welfare; and
- 3. The proposed use is consistent with applicable City policies and the intent and purpose of the Industrial (I) District involved.

CONDITIONS OF APPROVAL USE PERMIT 90-44

(Revised January 31, 1991)

- 1. The following shall be completed subject to approval of the Planning Director no later than April 30 1991.
 - a. Revise parking layout as shown on Exhibit "A". Move fence to allow for a 26-foot backup area and 90-degree parking to provide one handicapped and four standard parking stalls.
 - b. Correct site plan to show shed located on west side of parking.
 - c. Submit a drainage plan showing ground elevations of training field and exercise yards to prove adequate drainage flow (minimum one percent slope) to existing drain. Install all drainage improvements.
 - d. Pave new parking lot area and provide adequate drainage (minimum one percent slope).
 - e. Obtain approval of the surfacing material and drainage plan for indoor area from Alameda Department of Environmental Care Services Vector Control and have improvements installed prior to boarding dogs.
 - f. Provide one fire extinguisher type 2A:10BC as required by Fire Department. .
 - 2. Building must comply with all requirements of the Uniform Building Code including but not limited to State Title 24, Handicap Requirements.

- 3. Comply with all requirements of the Hayward Building Code including Chapter 41 Building Security Standards of the City of Hayward Building Code, Sections 4105, 4106, and 4107, by April 30, 1991.
- 4. The kennel runs must be cleaned (washed) daily. When water is used, the wash water shall be disposed of in the following manner: The floors shall be sloped and curbed to drain to the sanitary sewer system. Runs and exercise areas shall be disinfected three times weekly.
- 5. All food shall be kept in rodent and fly-proof containers or rooms. All perishable food shall be kept in refrigerators.
- 6. All putrescible waste (garbage) shall be stored in fly and rodent-proof containers. The contents of the containers shall be disposed of at an approved dump-site at least once every seven days (twice a week is preferred).
- 7. The premises shall be kept free of refuse so as to prevent the harboring of vermin, wild animals, and birds.
- 8. The use of sand or gravel in the run area for conditioning of show dogs is permitted, provided the material is replaced on a monthly basis and that animal wastes are picked up daily.
- 9. Comply with all City of Hayward Animal Control requirements such as, total number of dogs allowed on site at one time, cleanliness, size of kennels, treatment of animals in humane fashion, vaccine information and licenses for all animals kept on site, periodic inspections required.
- 10. No sign shall be erected on property without first obtaining a sign permit from the Planning Department.
- 11. Violation of any of these conditions is cause for revocation of permit after public hearing before a duly authorized review body. If there are any complaints regarding this operation, then the Use Permit shall be brought back before the Board of Adjustments for reconsideration.

030C



DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT Community Preservation Division

Heart of the Bay

November 10, 1997

Mr. Jack Van Voast K9 K9 Kennels 4125 Breakwater Avenue Hayward, CA 94545

Re:

Zoning Investigation No. 97-1940

Use Permit No. 90-44

Dear Mr. Van Voast:

This office, along with the Hayward Police Department Animal Control Division, conducted an inspection of your business, K9 K9 Kennels, on August 24, 1997, to investigate a report of mobile homes placed upon the property located at 4125 Breakwater Avenue, Hayward. The inspection showed that 2 mobile homes were on the property and that the mobile home situated along the southern fence of the property was being used as a residence. As subject property is zoned in an Industrial District, residential uses are excluded as a permitted use.

The dog kennel was approved in 1991 subject to 14 conditions imposed and the improvements indicated on the approved site plan (Exhibit A) of use permit application 90-44. Enclosed is a copy of the use permit conditions for your review. Especially note conditions 2, 3, and 11, which is applicable to this investigation. Hayward Municipal Code(HMC) 10-1.545 states that permits issued on the basis of approved plans and applications are valid only for uses set forth as approved. Construction of any structures must be approved as part of an amended use permit application. All structures must be permanent and comply with all requirements of the Uniform Building Code and have approved city permits.

Therefore, you must either remove the mobile homes from the property or obtain an amendment of the current use permit no later than December 15, 1997. Should these requirements not be complied with by the above date, this office will recommend referral of this matter to the Planning Commission for a hearing to revoke Use Permit 90-44. In addition, the property owner will be assessed a \$226.00 inspection fee, as well as other inspection fees allowed under the Hayward Master Fee Schedule and/or a citation to appear before the San Leandro-Hayward Municipal Court may also be issued to the property owner for the violations of the HMC. Any fees shall be placed as a lien against the property if unpaid.

Likewise, certain conditions of the use permit for the property are also to be addressed by the Hayward Police Department concerning alleged violations pertaining to the keeping and care of animals upon the property.

Attachment E

Mr. Jack Van Voast November 7, 1997 Page 2

Please contact me at (510) 293-5183 should you have any questions concerning the requirements stated in this letter. Questions regarding an application for an amended use permit can be answered by the contacting Development Review Services at (510) 293-5276. Your cooperation in this matter is appreciated.

For the City of Hayward,

Ken Jeffery

Community Preservation Inspector

enc: Exhibit A and UP 90-44

cc: James and Frances Dalton, Property Owners

Dyana Anderly, Development Review Services Administrator

Greg Armes, Animal Control Manager

Jim DeLuz, Associate Planner



DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT Community Preservation

December 2, 1997



Mr. Jack Van Voast K-9 K-9 Kennels 4125 Breakwater Avenue Unit E Hayward, CA 94545

Re:

Zoning Investigation No. 97-1940

Reinspection Postponement

Dear Mr. Van Voast:

This letter is to confirm the discussion which took place on December 1, 1997 at the Planning Division, concerning the violations of the zoning ordinance at 4125 Breakwater Avenue.

Please contact me at (510) 293-5183 should you have any question about this letter. Please direct any questions concerning the use permit application to the Jim DeLuz, Assistant Planner, at (510) 293-5241.

For the City of Hayward,

Ken Jeffery

Community Preservation Inspector

cc James Dalton, Property Owner Bill Mork, Senior Inspector

Jim DeLuz, Assistant Planner

Attachment F



CITY OF HAYWARD DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT DEVELOPMENT INSPECTION SERVICES

February 23, 1998

Mr. Jack Van Voast K-9 K-9 Kennels 4125 Breakwater Avenue Unit E Hayward, CA 94545

Re:

Zoning Investigation No. 97-1940

Reinspection Postponement

Dear Mr. Van Voast:

This letter is to confirm our conversation which we had on February 3, 1998 concerning the removal of the mobile homes at 4125 Breakwater Avenue.

This office will conduct another inspection of the property on April 10, 1998, where the removal of the yellow mobile home is to be removed from the property. Additionally, the mobile home being used as your residence upon the property, is to be removed from the site no later than May 8, 1998. This is to provide you with ample time to submit an application to amend the current use permit to allow the addition of a permanent 1200 square foot living quarters as provided in Hayward Municipal Code section 10-1.401b(2).

As explained in my previous correspondence of this matter, should you fail to comply with the orders of this letter, the property owners would be subject to a \$226.00 inspection fee, a citation to appear in the San Leandro-Hayward Municipal Court for land use violation and other civil remedies available to correct the violation. Additionally, failure to correct the land use violations may result in the recommendation to revoke Use Permit 90-44 to the Planning Commission.

Please don't hesitate to contact me at (510) 583-4713 about this letter and should you need to consult a planner, Jim DeLuz, Assistant Planner, could be contacted at (510) 583-4212. Your cooperation in this matter is appreciated.

For the City of Hayward,

Ken Jeffery

Community Preservation Inspector

cc:

James and Frances Dalton, Property Owners

Jim DeLuz, Assistant Planner



K-9 K-9 Kennels 4125 Breakwater Avenue Hayward, CA 94545 Attn. Jack Van Voast

Subject:

4125 Breakwater Avenue, Living Quarters for Security Personnel

Dear Mr. Van Voast:

The purpose of this letter is to clarify our numerous conversations regarding the City's interpretation of living quarters for security personnel. Living quarters for security or switchboard personnel is permitted in the City's Industrial District provided it is subordinate to an approved industrial use located on the property, that the living area is located within the primary structure that serves the permitted industrial use, and that the living area does not exceed 1,200 square feet in area.

Your proposal to retain the two mobile homes that are illegally located at subject property, one of which is your primary residence, does not conform with the intent and purpose of the City's Industrial District. As you have been informed by Community Preservation staff, both mobile homes must be removed as of the dates indicated by Community Preservation Inspector Jeffery in his letter to you dated February 23, 1998.

If you are still in disagreement with staff's interpretation of the design and location of where living quarters for security or switchboard personnel may be located, you may pursue either one or both of the following options:

- 1: Appeal staff's interpretation to the Planning Commission. An appeal of an item for interpretation by the Planning Commission is subject to time and materials charges incurred for staff processing time.
- 2. File a text change amendment to amend the City Zoning Ordinance, Industrial District, Section 10-1.401 b. Secondary Uses (2) Living quarters for security or switchboard personnel employees not to exceed 1200 square feet. Processing of a text change amendment is subject to a filing fee of \$300, plus time and materials charges for processing.

Your cooperation in this matter is appreciated. Should you have any further questions regarding this matter you may contact me at (510) 583-4212.

Sincerely,

James V. De Luz Assistant Planner

cc Ken Jeffery, Community Preservation Use Permit 90-44 (file)

k:\wp_docs\jimd\svan voast ltr



MAILING ADDRESS: P.D. BOX 4317, HAYWARD, CA 74540-4317
MUNICIPAL COURT FOR THE SAN LEANDRO-MAYWARD JUDICIAL JUDICIAL DISTRICT COUNTY OF ALAMEDA, STATE OF CALIFORNIA

DEPT. 8 CAL DATE U2/17/99 JUDGE/COMMISSIONER BLUUM COURTROOM STAFF RUZAL NAME/DISPATCHER NAME VANVUAST JACK GERSHAM	CITING AGENCY: 23 DOCKET NUMBER 0012278617 CITATION NUMBER B000111 ISSUE DATE 04/13/98 ROC ARRETA 9:00 AM SUM JUDG. DATE 08/26/99
CASH/BOND AMOUNT \$ RECEIPT NUM POSTED BY	BF EXON FSA REIN
DP AP DEF. ARRAIG. AND DULY ADVISED OF RIGHTS.	TW AW JW TWS
CHARGES PLEA	PROCEEDINGS
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ADDITIONAL PROCEEDINGS: INS =	
IMPORTANT: THE BOX(ES) CHEC	KED (✓) BELOW APPLY TO YOU
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(Home Phone No.)	(City) (State) (Zip)
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(Driver's License No.) (Birthdate)	Attachment I
FORM NO. 170-651 (REV, 9/97)	FILE COPY
Contraction of the contract of	



CITY OF HAYWARD AGENDA REPORT

AGENDA DATE	October 20, 1998
AGENDA ITEM	
WORK SESSION ITEM	

TO:

Mayor and City Council

FROM:

Director of Community and Economic Development

SUBJECT:

APPEAL OF TEXT CHANGE APPLICATION NO. 98-140-02 - JACK VAN VOAST (APPLICANT/APPELLANT) - Text Change request to amend the Zoning Ordinance to allow mobile homes for an employee/attendant's sleeping

quarters in conjunction with a commercial kennel in the Industrial District.

RECOMMENDATION:

The Planning Commission (5:2) recommended that City Council support staff's recommendation to adopt the negative declaration and deny the Text Change.

DISCUSSION:

The applicant, Jack Van Voast, is requesting an amendment to the Zoning Ordinance to allow mobile homes for an employee/attendant's sleeping quarters in conjunction with kennels in the Industrial District. Mr. Van Voast owns a kennel that was approved in 1991 with a use permit. It is the only approved kennel operating in the City's Industrial District. Since 1991 the Animal Services Bureau has received various complaints about the kennel operation. Complaints involved reports of animal attacks on kennel customers and employees and, in a case where animals had escaped from the facility, attacks on the general public. Kennel patrons have also filed complaints regarding animal abuse, overcrowding, and neglect. Several cases involved animals that were either lost after escaping from the facility, destroyed while loose from the facility or involved in an attack while loose, impounded and later ordered destroyed by court order. Other cases involved complaints regarding injuries sustained by animals boarded at the facility, or animals not provided veterinary treatment for injuries received while boarding at the kennel.

The applicant installed the two mobile homes on the kennel property over a year ago without City authorization. In September 1997, Community Preservation asked the applicant to remove the mobile homes from the property. Since that time staff has met with the applicant and suggested that he use conventional construction to create living quarters for a kennel attendant and that he modify his use permit for the expanded operation. The applicant has stated that the cost of conventional construction is prohibitive and has opted to seek an amendment to the Zoning Ordinance instead.



777 "B" St. HAYWARD, CA 94541

NUMBER

None

	(510) 583-4140	4125	Breakwater	Avenue	Lot	E
OWNERS OR PERMITEE'S NAME James and Frances	Dalton, Trs.	MAIL ADDRESS 4125	Breakwater	Avenue		,
•	₽ VIC	DLATION				

OWNERSOR PERMITEE'S NAME James and Frances Dalton, Trs.	MANE ADDRESS 4125 Breakwater Avenue
NO PERMIT-STOP WORK-REMOVE CONSTRUCTION,	CALL ZONING DIVISION AT 583-4200, CONCERNING VIOLATION OF ZONING REGULATION LISTED BELOW.
CONSTRUCTION NOT IN ACCORDANCE WITH APPROVED PLAN AND PERMIT - STOP WORK, MODIFY EXISTING WORK TO COMPLY WITH APPROVED PLANS AND PERMIT OR REMOVE IT.	STOP WORK - UNTIL AUTHORIZED TO CONTINUE BY
CORRECTION	ONS REQUIRED
CORRECTIONS LISTED BELOW MUST BE MADE	CONTACT INSPECTOR AND ARRANGE FOR APPOINTMENT.
COMMENTS:	

All unpermitted electrical installations shall be removed not later than January 4, 1999. Failure to comply with this notice shall result in the disconnection of electrical service to the mobile homes and nearby accessory buildings.

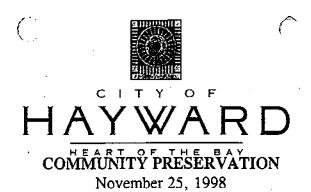
Pursuant to National Electrical Code (NEC) section 301 (a), "No electrical system regulated by this code shall be installed, repaired, replaced or remodeled unless a separate electrical permit for each building or structure has first been obtained from the building official".

Also, pursuant to NEC section 204, "It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, convert or demolish, equip, use or maintain any electrical system or equipment or cause or permit the same to be done in violation of this code".

Jack Van Voast, Tenant CC Harry Attri, City Building Official

BUILDING XXELECTRICAL HEATINGVENT. PLUMBING HOUSING SIGN

NSPECTORS ARE IN FROM 7:30 - 8:00am & 3:30 - 4:00pm PHONE # 583-



Mr. Jack Van Voast K9-K9 Kennels 4125 Breakwater Avenue, Lot E Hayward, CA 94545

Subject:

Violation of Zoning Ordinance

4125 Breakwater Avenue, Lot E

Case No. 97-1940

Dear Mr. Van Voast:

An inspection of your business on November 24, 1998, showed that the violations of Zoning Ordinance still continue by the keeping and occupying of two mobile homes upon property which is industrially zoned.

Hayward Municipal Code (HMC) section 10-1.401, <u>Uses Permitted</u>, defines allowable uses of properties within Industrial Zoned Districts of which your business is located. The placement of mobile homes upon this site is excluded as a permitted use of properties in this zoning. HMC section 10-1.101, <u>Limitation of Land Use</u>, in pertinent parts states that "Uses are permitted and conditions to use are established within each district as set forth herein, and no use shall be permitted within any district other than those uses for which the district is zoned".

Furthermore, the placement of the mobile homes and now the addition of a storage container, are not in the site plan which was approved in Use Permit 90-44. HMC section 10-1.545, Conformance-Administrative Modification, states that "Permits and licenses are issued on the basis of plans and applications approved by the Director of Community and Economic Development/Planning Director are valid only for uses, arrangement, and construction set forth as approved. Any use, arrangement, or construction other than that authorized is a violation of the Zoning Ordinance." Therefore, the expanded use beyond what is approved in the Use Permit is prohibited.

A reinspection of the property will be conducted on January 4, 1999, at that time, the mobile homes and storage shed are to be removed, and the illegal electrical wiring disconnected as specified in the enclosed notice issued by the City Sr. Electrical Inspector, Robert Walsh.

Mr. Jack Van Voast 4125 Breakwater Avenue, Lot E Case No. 97-1940 Page 2

Consequently, if this matter is not resolved, then an additional \$81.00 would be assessed to the already existing \$226.00 failed inspection fee of April 13, 1998, and any costs incurred by the City in bringing the property into compliance will also be assessed against the property. Additionally, this office shall seek the revocation of the current Use Permit and a referral will be made to the City Attorney for civil remedies available under the law.

Please contact me at (510) 583-4173 should you have any questions concerning this letter. Your cooperation in this matter is appreciated.

For the City of Hayward,

Ken Jeffery

Community Preservation Inspector

Enclosure Electrical Inspector's Notice

CC James and Frances Dalton, Trustees, Property Owners
Marvin Carash, Development Inspection Services Administrator
Dyana Anderly, Development Review Services Administrator
Harry Attri, City Building Official
Joan Borger, Assistant City Attorney
Robert Walsh, Sr. Electrical Inspector
UP 90-44





MAILING ADDRESS: P-O- BOX 4317, HAYWARD, CA-94540-4317 MUNICIPAL COURT FOR THE SAN LEANDED-HAYWARD JUDICIAL DISTRICT

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FILE COPY.

FORM NO. 170-651 (REV. 9/97)



Mr. Jack VanVoast K9-K9 Kennels 4125 Breakwater Avenue Lot E. Hayward, CA 94545

Subject: Use Permit 90-44 Revocation

Case No. 97-1940

Dear Mr. VanVoast:

This office has provided ample notice and opportunity to allow the removal of the two mobile homes currently kept at your business, K9-K9 Kennels, 4125 Breakwater Avenue, Lot E, Hayward.

The keeping of these mobile homes upon the property is contrary to Hayward Municipal Code (HMC) sections 10-1.101, <u>Limitations of Land Use</u> and 10-1.541(A), <u>Zoning Compliance</u>. Three citations have been issued for violation of these sections. The hearings held before a commissioner of the San Leandro-Hayward Superior Court resulted in convictions of these sections. Furthermore, the expansion of the property use by the placing of a shed and storage container requires a modification of the Use Permit of which none is on file.

Therefore, since you have not restored the property to the conditions approved in Use Permit 90-44, this matter has been referred to Development Review Services with our recommendation for revocation of the permit for the kennel.

You will be advised of the hearing date before the Planning Commission. Please contact me immediately at (510) 583-4173 should you have any questions concerning this matter.

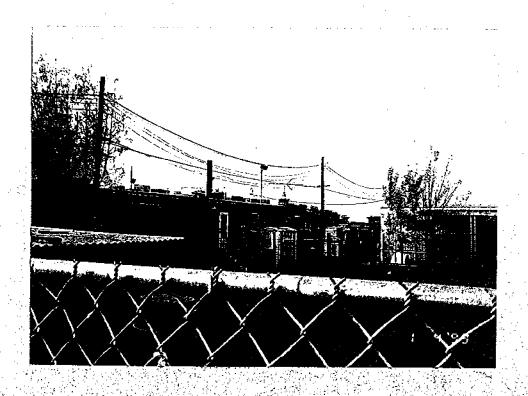
For the City of Hayward,

Ken Jeffery

Community Preservation Inspector

cc: James and Frances Dalton, Trustees, Property Owners

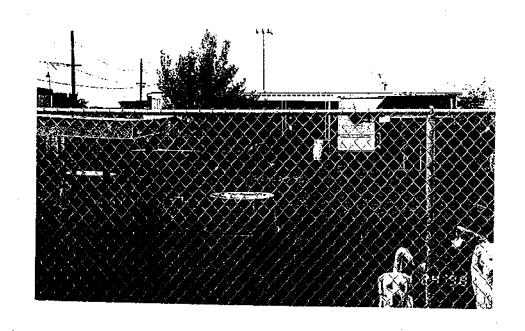
Dyana Anderly, Development Review Services Administrator
Ruben Duran, Deputy City Attorney

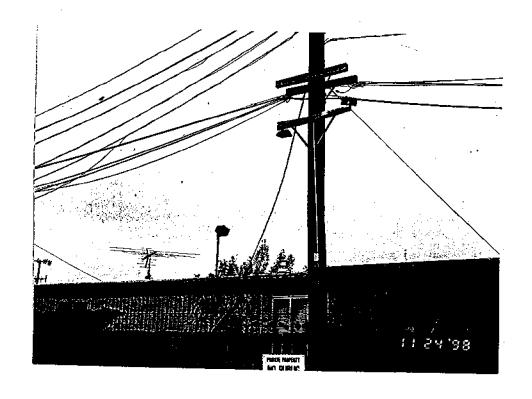


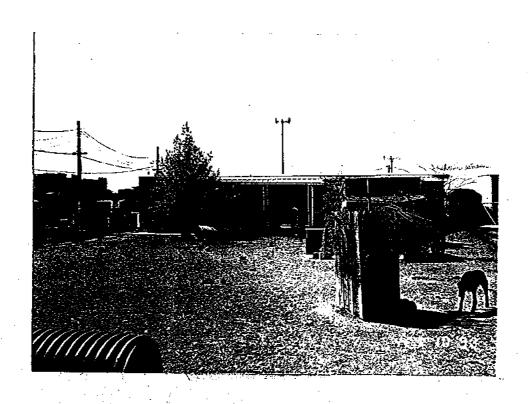


Attachment O











DRAFT or 10/4/99

HAYWARD PLANNING COMMISSION

RESOLUTION REVOKING USE PERMIT NO. 90-44 FOR FAILURE TO COMPLY WITH CONDITIONS OF APPROVAL AND ORDERING KENNEL OPERATOR AND PROPERTY OWNER TO CEASE AND DESIST OPERATION OF BUSINESS

WHEREAS, in 1991, the City of Hayward Board of Adjustments approved a conditional use permit for a dog kennel and training facility located at 4125 Breakwater Avenue in Hayward. The applicant for the use permit, Mr. Jack Van Voast, doing business as K9-K9 Kennels, told the Board of Adjustments that the main function of the business would be the breeding and training of Rottweilers; and

WHEREAS, since the use permit was approved in 1991 the applicant has committed many violations of the conditions in the use permit, the Zoning Code and animal control regulations, including but not limited to, numerous instances of improper care of the animals, having persons bitten by animals in his care, and placing portable structures on the grounds in violation of the Zoning Code; and

WHEREAS, the applicant and property owner have been notified by the City numerous times of the violations and admonished to take corrective action, and yet have continued to refuse to comply with the conditions and Code requirements.

WHEREAS, the Planning Commission has considered all the materials and testimony presented and based thereon, hereby finds and determines as follows:

- 1. The applicant and property owner have not fully complied with or completed all conditions of approval or improvements required by the use permit development plan in that:
 - (a) Condition No. 9 of the use permit requires applicant to comply with all City of Hayward animal control regulations. The facility has experienced repeated offenses of the animal control regulations such as failing to maintain the appropriate size kennels for each dog, failing to treat the animals in a humane fashion, and failing to maintain and comply with vaccine information and licenses for all animals kept at the site.
 - (b) The facility has installed trailers on the property which were not approved as part of Use Permit 90-44, and which are placed there in violation of the Zoning Code. The facility and property owner have been directed to remove the remaining trailer and have failed to do so.

Modification of the conditions or plan would not be in the public interest and would be detrimental to the public health, safety and welfare because the conditions are reasonable and necessary and the applicant has a lengthy history of disregarding zoning requirements and animal control regulations.

2. The manner in which the use is conducted, managed and operated impairs the character and integrity of the Zoning District and surrounding area in that the existing kennel has been a detriment to the neighborhood and to the kennel's patrons since it opened in 1990. The operator and the property owner have consistently ignored the City's notices to abate use violation situations and have continued to endanger the animals and people by repeated and ongoing violations of animal control regulations. The operator has received many oral and written notices over a six year period, including three infraction citations and orders to appear before the San Leandro-Hayward Municipal Court, yet the violations continue. Based on the extended history of noncompliance for the site, there is no reason to believe that such violations will cease.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Hayward that Use Permit No. 90-44 is hereby revoked, based upon the above mentioned findings.

BE IT FURTHER RESOLVED that the operator and or property owner must cease business, remove the trailer and vacate the premises. The operator must stop taking in any new animals immediately, and must also immediately notify owners of currently-boarded animals that their animals must be picked up. All animals must be removed, the trailer must be removed and the business premises vacated within 45 days from the date of this Resolution.

HAYWARD, CALIFORNIA, 1999
ADOPTED BY THE PLANNING COMMISSION WITH THE FOLLOWING VOTE:
AYES:
NOES:
ABSTAIN:
ABSENT: